

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

74-1612

UNITED STATES OF AMERICA,

ANDERS BRIEF

APPELLEE,

NOTICE OF MOTION

-against-

DOCKET NO. 74-1612

PATRICIA FENILI, a/k/a Lady Virtue,

APPELLANT.

B/P/S

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of David Blackstone, Esq. and all prior proceedings had herein, the undersigned will move this court at the United States Court House, Foley Square, New York, New York, on June 25, 1974, at the opening of court on that day, or as soon thereafter as counsel can be heard, for an order pursuant to *Anders v. California*, 386 U.S. 738 permitting counsel to withdraw as assigned counsel for appellant.

DATED: New York, New York
June 11, 1974

Yours, Etc.,

David Blackstone
Attorney for Patricia Fenili
335 Broadway
New York, New York 10013
Tel. No. 226-6684

TO: United States Attorney
Southern District of New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -x

UNITED STATES OF AMERICA,

APPELLEE,

AFFIDAVIT

-against-

DOCKET NO. 74-1612

PATRICIA FENILI, a/k/a Lady Virtue,

APPELLANT.

- - - - -x

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

DAVID BLACKSTONE, being duly sworn deposes and says:

I am the attorney for the appellant Patricia Fenili, having been assigned by this court on May 13, 1974, pursuant to the Criminal Justice Act. I make this affidavit in support of this motion pursuant to the rule in *Anders v. California*, 386 U.S. 738, to be relieved as counsel for appellant on the ground that the record presents no non frivolous issue for appeal. I represented appellant at her trial in the District Court, having been assigned to represent her under the Criminal Justice Act and am fully familiar with the entire case. I have read and studied the entire record and have conducted extensive legal research relative to the single arguable appellate issue I could discern from the record (pertaining to the admissibility of eye witness identification testimony). Based on this research, I have concluded that this sole issue is frivolous. I submit the following pertinent facts and conclusions of law in support of this motion.

PRELIMINARY STATEMENT

This is an appeal from a judgment of the United States District Court for the Southern District of New York rendered on May 3, 1974, convicting appellant, after trial without jury before the Honorable Morris E. Lasker of passing counterfeit money, Title 18 U.S.C. 472 (two counts) and bail jumping, Title 18 U.S.C. 3150, and sentencing her to concurrent one-year sentences on the counterfeit counts to be followed by a three-year period of probation on the bail jumping count.

The District Court granted leave to appeal *in forma pauperis*, and this court, on May 13, 1974, continued David Blackstone, Esq. trial counsel below, as counsel on appeal pursuant to the Criminal Justice Act.

STATEMENT OF FACTS

Patricia Fenili, a/k/a "Lady Virtue," dedicated lover and communal follower of "Om," a self-proclaimed living messiah, was prosecuted for passing two counterfeit \$20 bills at the St. Patrick's Cathedral book store on July 18, 1973 and for jumping bail on that prosecution when she failed to appear for an adjourned arraignment in the District Court on August 20, 1973.¹ Before trial, appellant was examined pursuant to Title 18 Sec. 4244 and found competent to stand trial.² The trial was held without jury, a hearing to determine the admissibility of eye witness identification testimony under the principles of *Simmons v. United States*, 390 U.S. 377 (1968) was held within.

1. A copy of the indictment is annexed hereto as Exhibit A.
2. A defense psychiatrist, appointed pursuant to the Criminal Justice Act, also examined appellant; however, no defense based on lack of criminal responsibility was interposed at trial.

THE GOVERNMENT'S COUNTERFEIT MONEY CASE

Andrea Clark, a nineteen-year-old Smith College student testified that she was employed as a saleswoman at the St. Patrick's Cathedral book store during the summer of 1973 and that on July 18 at 3 p.m. a woman entered the store, looked at some post cards and left after commenting that she would return. (8) About twenty minutes later, the same woman returned, picked up a few post cards and presented a \$20 bill for the purchase. (10) Clark accepted the bill, made change, and the woman left. (11) Later that afternoon, Mrs. Tambini, a supervisor informed Clark that her, Clark's, receipts included a counterfeit \$20 bill. (20) Clark could recall three \$20 bill transactions during the day but took no note of the respective bills received at the time. (35)

The following morning Clark gave a description of the woman to the secret service - about five feet six or seven, dark redish hair, pale complexion, in her 20's. (23) This description was based on her two close observations of the woman the day before, the first for about a half minute to a minute and the second for as long as it took to consummate the sale. (9-10)

One week later Clark was shown a photographic spread by a secret service agent. (24) The spread consisted of seven photographs, Exhibits 1A-1G and may be described as follows:

Exhibit 1A - poloroid color photograph of appellant, front view, standing.

Exhibit 1B - black and white mug shot, front and profile of fat woman with fat face.

Exhibit 1C - black and white photograph of young woman holding a baby.

Exhibit 1D- black and white mug shot, front and profile of fat woman with fat face.

Exhibit 1E - black and white passport size photograph of young woman from above abdomen.

Exhibit 1F - black and white photograph of young woman from above abdomen.

Exhibit 1G - black and white photograph of young woman from above abdomen.

The agent asked Clark to pick out the photograph which "most nearly resembled the girl [she] had seen in the store," (24) In response to this, Clark picked out appellant's photograph. Clark was then asked if "[she] thought it was the girl" and Clark replied yes. (29) Clark identified appellant in court as the woman who changed the \$20 on July 18. (22) The Court reserved decision on the Government's offer of the bogus \$20 bill found in Clark's receipts. (21, 172)

Donald Morrison, a Hunter College student about to enter a seminary testified that in July, 1973, he was employed part time at the St. Patrick's Cathedral book store and that when he arrived at work on the evening of July 18, he was informed by Andrea Clark that a counterfeit \$20 bill was passed at the book store earlier that day by a woman whom Clark generally described. (69)

At about 8:30 p.m. a young woman, identified by Morrison in court as appellant, entered the store, (40, 48) Morrison stared

at her face for about a half minute when she entered, not because of any suspicion on his part but because she was a girl. (76)

The woman, a few minutes later, sought to purchase a post card with a \$20 bill, folded in half. Morrison took the bill, placed it in the cash drawer, and gave her change. (41) As soon as she left, Morrison immediately opened the draw, looked at the bill, concluded that it was counterfeit, and attempted to follow the woman, but she was gone. (41) The \$20 bill Morrison received was introduced. (84) Two weeks later, the secret service showed Morrison a spread of photographs, Exhibits 1A - 1K, which may be described as follows:

Exhibit 1A - 1G - the same photographs Exhibit 1A - 1G in the Clark display.

Exhibit 1H - black and white photograph of oriental woman

Exhibit 1J - black and white photograph of young woman holding a puppy.

Exhibit 1K - black and white passport-type photograph of young woman.

The agent asked Morrison if he could identify the girl who made the pass, and Morrison, concentrating mainly on the faces in the photographs, picked out appellant. (57, 61) The secret service agent then told Morrison he had made the proper identification. (67, 68)

Agent Angelone and agent Ott of the secret service were called to testify about the photographic spreads shown Clark and Morrison. (84 et sec., 97 et sec.) Appellant's photograph was the only one

in color because the poloroid snapshot taken of her on her arrest in Atlantic City was the only one they had of her. (102)

Bernie Crane, a student at George Washington University testified that he was a special police officer in Atlantic City during the summer of 1973 and that on July 24 he arrested appellant on the Boardwalk in front of the King Kong custard stand, shortly after she attempted to pass a bogus \$20 bill at the custard stand. (105-108) Following her arrest, appellant asked to go to the bathroom and was permitted to go to the one in the back of the ice cream stand. (115) Crane became suspicious of the noise he heard coming from the bathroom after appellant entered and barged in. (116) As the toilet flushed appellant put her hand to her mouth. Later, at the police precinct. Crane noticed a lump in appellant's cheek. One of the detectives asked appellant to extract whatever it was. Appellant refused. Whereupon the detective forceably removed a chewed up counterfeit bill. Also found in appellant's possession at the time of her arrest was a bogus \$20 bill bearing the same serial number as one of the bogus \$20s passed at St. Patrick's on July 18. (109, 115-117)

Amy Seiden testified that on July 24, 1973, appellant passed her a bogus \$20 bill at an orange stand on the Atlantic City Boardwalk. Seiden reported the incident and later that day identified appellant, who was already in custody for the King Kong custard stand incident. (28, 138-139) This bogus \$20 also bore the same serial number as one of the bogus \$20s passed at St. Patrick's on July 18.

Janet Jaffee, legal secretary for Robert Bailey, Esq.

appellant's retained counsel on her Atlantic City charges, testified that on July 31, 1973, she took shorthand verbatim notes of appellant's statement to secret service agents in the presence of counsel, relative to her involvement in counterfeit money. On consent, the transcript was introduced. (147) According to the transcript appellant admitted making the passes at St. Patrick's intentionally and willfully, and admitted actually making the bogus bills, using a printing press housed in the loft on West 25th Street, New York City. (Xerox copy of the confession is annexed hereto as Exhibit B.)

THE DEFENSE CASE ON THE COUNTERFEIT
MONEY CHARGES

Patricia Fenili, a/k/a Lady Virtue, testified in her defense. Before entering "Om's service" five years ago she had attended American University. She was raised by her parents in Vineland, New Jersey. (281-282) In 1973 she and other "Om Lovers" lived communally in a loft at 146 West 25th Street, New York City. (282) Appellant stated that on July 18, 1973, the date of the St. Patrick's book store incident, she was at the loft the entire day participating in an "Om seminar" with Claudia Chung, a/k/a Lady Harmony, and Ellen McSweeney, a/k/a Lady Inspiration. (286-287) Thus she could not and did not pass any bills at the book store. (288)

Appellant stated that in mid July, 1973 she first learned that counterfeit money was being made by Gigi and Rico, non Om Lovers who had rented a section of their loft which housed a printing press. (283, 301) Appellant destroyed all the counterfeit money

she discovered, but just as she was leaving for a trip on July 19, she found six or seven more counterfeit bills and put them in her purse intending to "burn them" or "get rid of them" in the near future. (285, 289) Appellant traveled to Atlantic City and met a man on the street who took her to his home for "food spirits." Appellant felt exceedingly strange, perhaps drugged after partaking of these "food spirits." (290) When she went to an orange stand for a drink she unintentionally gave Mrs. Seiden one of the counterfeit \$20s she intended to destroy. (291) Afterwards appellant went to the custard stand and unintentionally presented another bogus \$20 to the salesperson, even though she had change from the earlier purchase. (345) Appellant tried to swallow a bogus bill after she was arrested because, although innocent, she was in a difficult position. (294) Appellant admitted making the confession to the secret service but stated it was a false and untruthful one -

"... I was being persuaded by my own free will to do that and not listening to Om's voice within me which always results in wrong action. I was also in what you could call a confused state of mind."
(301)

Appellant attributed her technical knowledge of printing counterfeit money, as related in the confession, to her general knowledge of printing press operations, a skill she had worked at in the "old world" and from a conversation she had one day with a stranger while she was soliciting alms on the street. (305)

Ellen McSweeney, a/k/a Lady Inspiration, and Claudia Chung, a/k/a Lady Harmony, testified for the defense and confirmed appellant's presence at the loft on July 18, 1973. (193, 247) The witnesses also confirmed that Gigi and Rico had been responsible

for printing the counterfeit money, unbeknownst to Om Lovers, who would not violate "old world law." (201-202, 218-221, 231, 269-270)

THE BAIL JUMPING CASE

Magistrate Gerald Goettel testified that on August 7 the appellant appeared before him to post bail, having been released the preceeding day for that purpose by Magistrate Jacobs following her arrest on the counterfeit charge. (161) Judge Goettel administered the oath and the personal recognizance bond signed by appellant was admitted. (162)

William Kelleher, Chief Clerk of the Criminal Division of the United States Attorney's Office in the Southern District, testified that on August 13, 1973, he was present when the case of *United States v. Fenili* was called. (165) The witness testified, after refreshing his recollection with a certified transcript of the proceeding, that appellant came forward and asked for an adjournment to obtain the presence of her New Jersey attorney. The Honorable Inzer B. Wyatt, presiding judge, granted appellant a one-week adjournment and told her to return on August 20, 1973. (165, 166)

Pursuant to stipulation it was agreed that on August 20, 1973, when the case of *United States v. Fenili* was called, there was no response from appellant and a bench warrant issued. (168)

Appellant testified that she knew she was supposed to appear in court on August 20, 1973, and that "old world law" is such that people are arrested for bail jumping if they fail to appear, but that she absented herself and went to Chicago and then Mexico notwithstanding because -

"... [she] had an inner impulse, an instinct that it was [her] duty to be with Om's children, to keep them secure, to be with them at all times."
(316, 318)

DECISION OF THE COURT

Judge Lasker, agreed with defense counsel that appellant's photograph had a suggestion of verticality not present in the other pictures, but noted that a fair percentage of the photographs were of young women with remarkably good resemblances to appellant and concluded that even though he was unhappy with appellant's color photograph, he was not persuaded that the procedures were unnecessarily suggestive, and that in any event the witnesses independently identified appellant in court free from any possible taint. (Xerox copy of the opinion and colloquy attached as Exhibit C.)

Judge Lasker found appellant guilty on all counts. (Xerox copy of the findings and conclusions attached hereto as Exhibit D.)

CONCLUSIONS OF LAW

Defense counsel argued that the secret service identification procedures were impermissibly suggestive, as to both photographic displays, in themselves, and by virtue of subtle verbal suggestion. In support of this counsel argued that appellant's photograph was the only one in color, thus emphasizing her reddish tinted hair and pale complexion, characteristics noted by Clark in her prior description. Also, her photograph was the only one which prominently displayed an ectomorphic body frame, another characteristic noted in the prior descriptions.¹ It was also argued that agent Angelone

¹ In the Clark display, two of the photographs (Exhibit 1B and 1D) were of very fat and fat faced women. These photographs were included in the Morrison display which also included a photograph of a young oriental woman (Exhibit 1H). The ectomorphic features of the other women were not strongly prominent either because the photographs were passport size, revealing only part of the upper body (Exhibit 1E, 1F, 1G, 1J, 1K) or because the picture was simply not conducive to such evaluation (Exhibit 1C).

unfairly focused Clark's attention to appellant's photograph by first asking her "which photograph mostly nearly resembled" the perpetrator and that agent Ott improperly bolstered Morrison's identification by advising him that he had picked out the right person.

In *United States v. Magnotti*, 451 F2d 1140 (2nd Cir. 1972) and *United States v. Harrison*, 460 F2d 270 (2nd Cir. 1972), Cert. Den. 409 U.S. 862, this court had occasion to deal with the claim that a full view photograph of a defendant was impermissively suggestive when exhibited along with less than full view "mug shots" and rejected a per se approach. In *Magnotti* the court's test was whether the "photograph singled out any distinguishing personal characteristic of the defendant not possessed by the men in the other photographs." An in *Harrison* the court commented:

"While it was true that a line-up of photographs may become impermissively suggestive when the distinguishing characteristics of the other persons shown, as compared with those of the suspect, are dramatically pronounced so that a witness who had seen the suspect only briefly on one occasion might well be influenced in making an identification by the unnecessarily striking differences which made the photograph of the suspect stand out prominently from the others, this is not such a case."

at 271

See also *Foster v. California*, 394 U.S. 440 (1969); *United States v. Abbate*, 451 F2d 990 (2nd Cir. 1971).

The force of counsel's contentions was seriously undermined by the fact that many of the women displayed bore similar facial features as appellant's and the fact that Morrison claimed to have focused his attention solely on those facial features. Additionally many of the photographs were of young thin framed women

albeit not as obviously so as appellant as she was portrayed. It is not for these countervailing considerations, however, that this *Anders* motion is filed. In fact, for the purpose of the motion, counsel presumes that the identification procedures were improperly suggestive.

A finding of unnecessary suggestiveness need not lead and in this circuit often has not led to the exclusion of identification testimony. See e.g., *United States v. Abbate, supra*; *United States v. Miele*, 481 F2d 960 (2nd Cir. 1973); *United States ex rel. Gonzalez v. Zelker*, 477 F2d 797 (2nd Cir. 1973), Cert. Den. 414 U.S. 924; *United States v. Byrum*, 485 F2d 490 (2nd Cir. 1973); *United States v. Evans*, 484 F2d 1178 (2nd Cir. 1973). The ultimate issue is whether the impermissible suggestion gave rise to a very substantial likelihood of irreparable misidentification. *Neil v. Biggers*, 409 U.S. 188 (1972); *United States v. Evans, supra*; *United States ex rel. Gonzalez v. Zelker, supra*. On this, the court will assess the likelihood of misidentification by weighing such external factors as -

"the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation."

United States ex rel. Cannon v. Montanye, 486 F2d 263, 267 (2nd Cir. 1973)

The court will also consider the other evidence before the trier of fact which tends to establish that there was not substantial likelihood of misidentification. *United States v. Abbate, supra*; *United States ex rel. Gonzalez v. Zelker, supra*; *United States v. Byrum, supra*.

Judge Lasker had before him appellant's lengthy confession in which she fully admitted her responsibility for the two St. Patrick's passes. He also had before him undisputed evidence that appellant, soon after those passes had also passed one counterfeit \$20 and had attempted to pass another in Atlantic City. These Atlantic City bills bore the same serial number as the bills in St. Patrick's.

Appellant herself testified and admitted her involvement in the Atlantic City passes and her possession of and assess to counterfeit \$20s bearing the same serial number as those passed at St. Patrick's. She also revealed that she had the technical knowledge necessary to make the bills and a printing press with which to do it.

Both Morrison and Clark had a clear close unobstructed view of the perpetrator and Morrison had been previously alerted to the possibility of a pass. Both of their descriptions were generally accurate and both expressed no uncertainty in their courtroom identifications or uncertainty at the time of the confrontations. Clark's identification took place one week later, and Morrison's two weeks. Morrison was pressed vigorously on cross examination and held firm in his certainty of identification.

For these reasons it is counsel's belief that this court would summarily reject a claim that there was substantial likelihood of misidentification in this case.

In light of the foregoing discussion, it is respectfully requested that the court grant this motion of David Blackstone for leave to withdraw as counsel on this appeal.

I hereby represent that a copy of this motion has been mailed to appellant, along with a letter of instructions (a copy of which is annexed hereto as Exhibit E) as to the manner of proceeding in making a response thereto.

David Blackstone
DAVID BLACKSTONE

Sworn to before me this
11th day of June, 1974.

Henry K. Chapman

HENRY K. CHAPMAN
Comm'r. of Deeds, City of N. Y. No. 1-374
Cert. filed in New York County
Commission expires Jan. 1, 1976

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

PATRICIA FENILI,

Defendant.

INDICTMENT

S 74 Cr. 25

Count I

The Grand Jury charges:

On or about the 16th day of July, 1973, at or about 3:00 o'clock in the afternoon, in the Southern District of New York, PATRICIA FENILI, the defendant, unlawfully, wilfully and knowingly, and with intent to defraud, did pass, utter and publish, and attempt to pass, utter and publish a falsely made, forged and counterfeited obligation and security of the United States, to wit: One counterfeit Twenty Dollar (\$20) Federal Reserve Note.

(Title 18, United States Code, Section 472)

Count II

The Grand Jury further charges:

On or about the 16th day of July, 1973, at or about 7:00 o'clock in the evening, in the Southern District of New York, PATRICIA FENILI, the defendant, unlawfully, wilfully and knowingly, and with intent to defraud, did pass, utter and publish, and attempt to pass, utter and

publish a falsely made, forged and counterfeited obligation and security of the United States, to wit: One counterfeit Twenty Dollar (\$20) Federal Reserve Note.

(Title 18, United States Code, Section 472.)

Count III

The Grand Jury further charges:

On or about the 20th day of August, 1973, in the Southern District of New York, PATRICIA FENILI, the defendant, having been released pursuant to Title 18, United States Code, Chapter 207 (The Bail Reform Act) in connection with a charge of passing counterfeit currency, a felony, unlawfully, wilfully, and knowingly did fail to appear before the United States District Court for the Southern District of New York as required.

(Title 18, United States Code, Section 3150.)

Foreman

PAUL J. CULLEN
United States Attorney

if Olm
told
he
to have
is at
volunt.

There is
No way that
he has to know. There is a
way that that
all he has to do here is to act
is to act freely, to act voluntarily, with
a deliberate purpose off not been
in the 18th when supposed to

✓ S ✓ Hall
346 F2d 875
(don't have to
know coming
to jury box)

EXHIBIT B

July 31, 1973

This is a voluntary statement by Patricia Fenili, 79 Columbia Avenue, Vineland, New Jersey, after she had been advised of her constitutional rights, and in the presence of her attorney; before Agent Guy P. Caputo, Agent Kenneth Grose, Agent John Simon, Agent Thomas Kaogh, and witnesses, and the statement is free and voluntary after consultation with her attorney, Robert E. Bailey, Esquire, at 317 Landis Avenue, Vineland, New Jersey, on the above date.

AGENT CAPUTO: Let me first explain what we are interested in. We have several pieces of these counterfeit 20's. We executed a search warrant at 146 West 25th Street, in New York City, which is on the 6th floor, where you had been residing with a number of other individuals. The search warrant revealed approximately \$8000 in counterfeit currency, which were in \$1, \$10, \$20, \$50, and \$100 denominations. The basis of the warrant which was issued in New York, is that you were identified in St. Patrick's Cathedral passing a counterfeit \$20 federal reserve note, the same type of counterfeit that was found as a result of the search warrant at the location where you had been living, and this was on July 18th that the note was passed, of this year. What we would like from you is information as far as your involvement with this whole operation, your knowledge of what took place at that location, or at other locations, and more or less what we are looking for, is as much information based on your knowledge that you can give us as far as the other people involved, and as far as your particular involvement in this whole counterfeiting operation. O.K.?

A. Is it possible to have questions and answers? Because I am not a very good story teller.



Q. We are interested in the whole story behind this and by making it specific. There may be things that you may leave out, but as you go on telling us your story, this may refresh your recollection. Things that you tell me, of course, we will have questions to ask you based on the statements that you give.

MR. BAILEY: What you did to accomplish it.

A. I printed the money up at the location which you were supposed to have gone into, beforementioned location, and this place was a place where many people came and worked, and I had access to the print shop in the back. In fact, I was the one who was supposed to be working back there and so I more or less had it to myself, and I did this without the knowledge of any of the people who were living there and so I had been working on it for months.

Q. How did you get this idea to print counterfeit?

A. I had been drifting away from this religious organization, and I just had decided that I didn't fit and so I had never made any much of a contribution to it so I decided I would help to pay the back rent which was behind \$500, in rent on the place and so this is why.

Q. We are at the end of July. How long prior to this date did you begin the operation?

A. All the initial work was done about three months ago, something like that, maybe a little more, but the printing was done about three months ago.

Q. How did you start the operation?

A. By taking pictures.

Q. You took pictures of what?

A. Of bills.

Q. What denomination?

A. 20's and 5's, 1's and 10's.

Q. Nothing else?

A. No.

Q. Why don't you explain to me exactly step by step what you did in the operation to produce a counterfeit bill?

A. I took pictures with a camera that used to be there and which is now sold, and afterwards I did the stripping and opaquing on them, made the plate and ran it.

Q. How many plates did it take to make one completed bill?

A. How many plates? In the offset process it only requires one plate. I mean the other part was more than one plate.

Q. What did you have on each plate?

A. One plate has the seal on it and the numbers, and the one plate has the tint, and one plate has the front and one has the back.

Q. You took a photograph? And then you stripped what?

A. The film--the negative.

Q. And how would you do that?

A. On a plate maker.

Q. After that? After you had a plate---

A. Put it on the press---

Q. What type of press was it?

A. Offset.

Q. Do you know the make or the number or the type, more specific than just offset?

A. ATF Press.

Q. Where was it physically located on the 6th floor?

A. In the print shop area in the back.

Q. Did anybody else have access to the print shop area besides yourself?

A. Yes.

Q. Who else was present?

A. No one while I worked on this. X

Q. Who knew about what was going on?

A. No one there knew it.

Q. How long did it take you to make the plates?

A. It took me many hours because you know I was just more or less learning as I went.

Q. How did you learn the printing operation? Do you have any kind of training in printing?

A. Not any formal training. I have read many books and I had lessons from various people more or less informal. Not from a school.

Q. People connected with this organization?

A. No, people from the outside. Like professional people.

Q. Did you discuss this operation at any time with any one while the operation was going on?

A. No.

Q. As far as hours go, what time of the day or night did you operate the presses?

A. Well, whenever anyone wasn't there, or at night mostly.

Q. Did you ever operate while there were people on the 6th floor?

A. No. There may have been someone sleeping there, I don't know, they may have been there.

Q. Let's get back exactly to the denominations that you printed. You say 1's, 5's, what else?

A. 1's, 5's, 10's and 20's.

Q. O.K. Did you ever make plates or counterfeit money of 50 and 100 denominations?

A. Uh-huh.

Q. How much did you make, estimate, of each denomination?

A. I really don't know. I printed up a whole lot, but most of them weren't any good. They weren't good enough.

Q. What did you do with those?

A. I burned a lot of them.

Q. What about the plates and negatives for these bills, where are they now?

A. The plates I sanded and threw away and also threw the negatives away.

Q. When?

A. Just before I left.

Q. Which is approximately when?

A. Three weeks ago or something like that.

Q. O.K. To the best of your recollection, where did you pass whatever notes that you did have?

A. Passed them in New York and Philadelphia and Atlantic City.

Q. Specifically where? Do you remember?

A. I remember some of the places. I don't remember names. Book shops and card shops and drug stores.

Q. What is your estimate as far as the total amount of counterfeit that you have passed?

A. I don't know.

Q. You don't know. Has it been once or twice a week or every day of the week within the last three weeks that you left there?

A. I don't understand.

Q. Do you have any idea how many days a week you went out passing counterfeit money?

A. I only did it a few days.

Q. Who was with you when you passed this counterfeit?

A. Just by myself.

Q. You sure of that?

A. Yes.

Q. You said Philadelphia, New York and Atlantic City. Any other places?

A. Not that I recall.

Q. Approximately how much counterfeit was left that you didn't destroy?

A. Well, whatever you found there.

Q. Where was it physically? Where did you keep it?

A. I don't remember where I left it.

Q. It's only three weeks ago. Did you leave it in the printing area?

A. I would seem the likely place, but I really--it'll come to me.

Q. O.K. How many impressions did you have on each plate?

A. I put three rows and each of them had about five or six.

Q. You had three rows and five or six to each row?

A. Yes.

Q. How big was the plate?

A. It was 29 inches by something, the kind that fits on the larger press.

Q. How many presses are there up there?

A. When I left there were two.

Q. What was the other type of press?

A. It was a smaller one.

Q. You used the larger one of the two?

A. Uh-huh.

Q. What type of paper did you use?

A. What type? It was a regular stationery kind of paper. It was yellowish.

Q. Do you know how big the sheets were?

A. I'm not sure of their original size.

Q. How many denominations did you have on each plate?

A. How many different kinds?

Q. Yes. You said you printed 1's and 5's. How many of each denomination did you have on each separate paper?

A. I had various arrangements.

Q. How many total plates did you make?

A. I made a lot of plates, but not all were useful.

Q. And those that weren't?

A. I threw them away.

Q. From the time you completed making whatever plates you did, how long did you work at actually printing the counterfeit?

A. You mean hours or what?

Q. Approximate days or since when?

A. I worked about five different days.

Q. And when did you stop making the counterfeit?

A. About two or three weeks ago. I don't remember exactly.

C. What I would like to do now is open the floor to questions.

AGENT GROSS: Where did you buy the paper?

A. The paper was already there. See, we had a lot of paper. Some of it was stored downstairs and some was upstairs.

Q. You have no idea where it came from?

A. Some of the paper there was bought at auctions and some of it was given.

AGENT SIMON: Before a note is completed, how many times do you have to run it through the press?

A. I think it is six. That's how many times I did it.

Q. From the time you were arrested in Atlantic City, you haven't left your father's home. Correct?

A. No, that's not correct.

Q. You traveled out of the area?

A. No, not out of the area.

Q. Close proximity to Vineland?

A. Yes.

Q. You say that the whole operation was your doing. The manufacture of the notes was done solely by you and the passing. Are you protecting anyone?

A. No, I am not. I'm certainly not protecting myself.

Q. Are you protecting someone else who is involved in this thing?

A. No.

Q. I have no other questions.

AGENT KEOGH: Regarding Atlantic City on the boardwalk, when the policeman came up to you, after you passed the note at the King Kong custard stand, and you went to the bathroom, did you flush any down the toilet?

A. I did not.

Q. How many did you have on you when you were picked up? Do you remember?

A. Not exactly.

Q. O.K. Pat. Were you alone in Atlantic City on the boardwalk?

A. Yes.

Q. Do you have any idea who was calling all night at the Atlantic City Police Station for you?

A. Yes. I couldn't tell you the name of the person, but I did meet a person that night before I had gone up on the boardwalk.

Q. Male or female?

A. Male. I had made arrangements to meet him later that evening, and he had a wife or girlfriend and I said jokingly, if he went to the boardwalk and if I wasn't there, he should call the police station.

Q. The police report states that you went up to the ice cream stand and asked for an orange drink and said wait a minute, let me see if my boyfriend wants one. Why did you do that?

A. Yes, I can explain that. I did it because there were other people who had just come up to the stand and I would just rather not have other people around since I was trying to get this thing across.

Q. You waited until they left?

A. Yes.

Q. You don't know of any female who called that night?

A. Only that one idea.

Q. You said it was a guy.

A. He mentioned he would be there with his wife or girlfriend or whoever it was.

Q. Who else would have access to these counterfeit notes? Anyone?

A. Well, there was one time when I had a purse with me which had a number of them in it, and I thought I was about to be arrested so I threw it in a trash basket, and of course it wasn't that I was going to be arrested, and so when I went back it wasn't there. It is possible that someone picked that up.

Q. Where was this?

A. New York.

Q. Had you been to Boston in the last three weeks?

A. Uh-huh.

Q. Did you pass any in Boston?

A. Yes.

Q. Did you pass any up there?

A. Uh-huh.

Q. Do you remember how many you passed?

A. I don't remember.

Q. You say you have been in New York, Philadelphia, Boston and Atlantic City. Are there any other cities that you have been in that you might have forgotten before?

A. No, I don't think so.

Q. Anyone with you in Boston?

A. No. I traveled alone, but I met people on the way.

Q. Did anyone else that you met have any knowledge that you were passing counterfeit money?

A. No.

Q. How did you travel around from New York to Boston to Atlantic City?

A. I hitchhiked and took trains and busses.

Q. O.K. About how long were you in Philadelphia?

A. Just about two days.

Q. Two days. And from Philadelphia did you go to Atlantic City?

A. Yes.

Q. How long were you in Atlantic City?

A. One night. I was there two days after that in jail.

Q. You arrived straight from Philadelphia to Atlantic City?

A. Yes.

Q. The first time you passed a note, did you pass it in New York? Where did you go from there?

A. Yes. Boston.

Q. O.K. Do you remember stopping anywhere else?

A. No.

Q. Do you remember how many notes you passed on the boardwalk in Atlantic City?

A. One or two.

Q. Could you give us an approximate number that you passed in Philadelphia?

A. Ten--I don't know.

Q. O.K. Did you keep all the proceeds from the passing of these counterfeits?

A. No, I didn't.

Q. What did you do with the money from passing them?

A. Some of it I gave--sent to Miss Sarah Young, and some I of course spent traveling.

Q. Did Miss Young know anything about you making or passing the counterfeit?

A. No.

Q. O.K. That's all that I have.

AGENT CAPUTO: What was the last step after you had a completed sheet of counterfeit? What did you do last?

A. A printed sheet? I cut it on a paper cutter.

Q. Could you describe the cutter?

A. Hand cutter.

Q. How big? Was it as big as the sheet of notes?

A. Maybe not quite as big.

Q. How long had you been living at 146 West 25th Street? When did you first start living there?

A. On and off since about last summer or fall.

Q. At the beginning you said that you felt you weren't contributing and wanted to use the counterfeit to pay for some back rent. How much did you use for the rent?

A. I didn't pay any rent. I sent what I got from passing it around to Sarah Young.

Q. How did you get the genuine money that you photographed in making the counterfeit?

A. From the banks.

Q. Did you ask specifically for any type of genuine bill?

A. New bills.

Q. Do you remember any of the details on the genuine bills? Some of the numbers?

A. No, I don't.

Q. What banks were they from?

A. I don't know.

Q. How many seals are on a genuine bill?

A. How many seals? There's a seal right over the number--written out

number. There's another seal on the other side of the picture. Two seals.

Q. How many sets of numbers are there?

A. How many sets of numbers?

Q. One of the seals are above the numbers---

A. Lots of numbers. Serial numbers, two.

Q. Do you know where they are located?

A. One is over the Washington, D.C., and one is in the right upper corner and one is in the left bottom corner.

Q. Did you ever make any inquiries to buy paper? Or did you use whatever was available?

A. I just used what was available. I wasn't into making it except for this one purpose.

Q. Do you know an individual by the name of Susan Green?

A. No.

Q. Did you ever use the name Susan Green?

A. Yes.

Q. When?

A. When I brought one into a bank and they noticed that it was different then they gave me a receipt.

Q. What denomination bill?

A. 20.

Q. You just went in there to change it?

A. Well, I was going to get a money order.

Q. Do you remember what bank?

A. No, but it was on 42nd Street in New York.

Q. Who was with you at that time?

A. I was alone.

Q. Do you remember approximately the date that that happened? Can you relate it to something else?

A. I don't even know what date it is today. Not big on dates.

Q. The day that you brought this counterfeit to the bank, had you passed any other counterfeit notes that day?

A. Yes.

Q. Was that in New York also?

A. Yes.

Q. Do you remember where?

A. Yes. One was at St. Patrick's Cathedral.

Q. How many notes did you pass at St. Patrick's Cathedral?

A. Two.

Q. What denomination bills were they?

A. 20's.

Q. And was it during the day that you passed them? In the morning?

A. One was in the afternoon and one was in the evening.

Q. During the time that you left in the afternoon, did you go any place else and pass any more that day?

A. I did. The days aren't really distinct to me.

Q. This is the same day that you were both at the bank on 42nd Street and at two separate times at St. Patrick's Cathedral.

A. I really just went to so many places.

Q. Let's get back a little bit to the manufacturing of these. What type of camera did you use?

A. What make?

Q. Describe it.

A. The camera was a long--I don't know what you call it--a process camera, on a long bed. It's got a copy binder. I don't know too many

technical names.

Q. O.K. How exactly did you photograph it?

A. You put your copy in the copy binder under glass and turn the light on it.

Q. Then you photograph that?

A. The film goes in the back part, that's in the dark room.

Q. O.K. How many notes did you photograph at one time?

A. Well, I did the process gradually. I didn't do everything all at once.

Q. Did you just photograph one or two or three bills at a time?

A. No, a number at once.

Q. O.K. Did you only use one of each denomination? Or did you use more? Did you have just one 10 that you photographed as to maybe three or four that you photographed?

A. A couple of each denomination.

Q. Who developed the film?

A. I did.

Q. Where?

A. In the dark room.

Q. You have a dark room there?

A. Uh-huh.

Q. After you had the negative, explain again what you did with it.

A. I prepared it for making a plate.

Q. How was that?

A. Well, from plates which you only put the seal on the rest of the bill had to be opaqued, and so it was consisting of opaquing and stripping, masking certain parts to make each plate.

Q. And each plate consisted of what?

A. Three rows about six up.

Q. Do you remember the total number of plates that you made?

A. That were used or total number?

Q. Well, tell me what was made, what you discarded, and what you used to print the counterfeit.

A. I must have made about 20 or so, but only a quarter of that would be used for the final.

Q. One plate you said you had the front, one plate the backs, and what else?

A. The seals.

Q. The seals were on one plate?

A. Yes.

Q. And what else?

A. And I used a tint.

Q. What do you mean by a tint?

A. A 5 per cent tint which was used to color the paper. It's a piece of film that you just buy and it's like a screen---

Q. And there was four different prints to make a completed note?

A. Uh-huh. I think that's all I used.

Q. How did you get the serial numbers on it?

A. How did I get them on it?

Q. On the completed note. That was a separate plate?

A. Uh-huh, that was on with the seal.

Q. So the serial numbers and seals were on the same plate?

A. Uh-huh.

Q. O.K. One of the plates were colored? Were they all black and white? Was the front black, the back black, serial number and seals black, and the seal was the only colored impression that you had on those plates?

A. No. There wasn't any black. Nothing was black.

Q. What was it?

A. It was a certain mixture of inks.

Q. Did you mix the inks yourself?

A. Yes.

Q. What did you do with the genuine notes that you used as the specimen?

A. What did I do with them?

Q. Uh-huh.

A. The ones I photographed?

Q. Yes.

A. They were either spent or they were spent some way.

Q. They weren't destroyed?

A. No, I didn't save them.

Q. How did you physically dispose of the plates and negatives that you did make?

A. I just threw them in the trash.

Q. Where?

A. At the place.

Q. Was it outside? Did you put it in a garbage can outside or were they inside the place?

A. They were taken down from the place.

Q. Were they in contact? Were they in one place?

A. The plates?

Q. Right, and the negatives?

A. Uh-huh.

- Q. Did you destroy them all at once?
- A. No, they were mixed in with other trash.
- Q. When was the last plate destroyed? How long ago?
- A. Two or three weeks.
- Q. And the negatives?
- A. Two or three weeks.
- Q. Which did you destroy first?
- A. I don't remember.
- Q. How many negatives did you make?
- A. Are you asking how many sets of film or how many pictures?
- Q. How many pictures?
- A. About 30 pictures or something like that.
- Q. How many pictures on one set?
- A. About 18, something like that, 15.
- Q. Three rows of six or three rows of five?
- A. Yes.
- Q. The same amount that was on the plate?
- A. Yes.
- Q. What did you make the rows of? What denomination bills?
- A. 20's.
- Q. How about 100's. Did you make those.
- A. Yeh, I made a couple, but---
- Q. Did you ever pass any?
- A. No.
- Q. All completed bill?
- A. Yes--you mean cut it and everything, right?
- Q. The whole bill.
- A. ----

Q. What didn't you make whole bills of?

A. I think I cut everything by the time I left.

Q. There weren't any portions of bills. In other words, no half-sided bills?

A. I don't think so.

Q. O.K. How many 50's did you make?

A. I don't remember exactly how many.

Q. In relation to the other notes, a lot less?

A. Yes.

Q. If you were to put them on a scale from the most you made of a denomination to the least, how would you order it. On the top you said you made most of the 20's, what was the second most?

A. The 10's.

Q. And then?

A. The 1's, the 5's, and 50's and 100's.

Q. After you left 146 West 25th Street, you say that was approximately three weeks ago?

A. Uh-huh.

Q. Where did you stay in New York?

A. Well, what I did was go out and pass some and then I stayed back there a couple of times, and a couple times with some other people that I knew from the street.

Q. How many days in the last three weeks had you spent in New York?

A. I'm just lost as far as time.

Q. Was it one day, two days, a week?

A. I don't know.

Q. How long after you left 146 West 25th Street did you go to Boston?

A. Two or three days.

Q. So that's over three days you spent in New York. How many days did you spend in Boston?

A. About two or three.

Q. What area did you stay in in New York? Did you stay in Manhattan, Bronx, Queens?

A. Manhattan.

Q. You didn't go anywhere outside of Manhattan while you were in New York?

A. You mean---

Q. What I am trying to get at here is what other areas of New York you might have passed some more counterfeit?

A. I traveled to Queens also.

Q. Did you pass any notes in Queens?

A. I may have passed one.

Q. Do you know where?

A. I don't know Queens.

Q. How about the other Boroughs?

A. I am not familiar with New York except for Manhattan.

Q. How about in Boston? What general area did you stay in there? There's Beacon Hill?

A. I don't know the names of any of the areas there. Around the colleges and I know I was around Harvard.

Q. After you left Boston, you went where?

A. To Philadelphia.

Q. And then to Atlantic City. How many days in Philadelphia?

A. About two.

Q. And each time that you traveled, you traveled alone?

A. Yes.

Q. And each time you passed a counterfeit note you were by yourself?

A. Yes.

Q. And nobody knew about the operation while you were manufacturing the counterfeit at 146 West 25th Street?

A. No.

Q. Nobody knew that you were passing it.

A. No, at least I hope not.

AGENT SIMON: Pat, you said that you had the money hidden in the loft at 146 West 25th Street. It was all contained in one package?

A. Correct, it was in one.

Q. And no one had any knowledge where the money was hidden except yourself?

A. Yes.

MR. BAILEY: How many employees did the print shop have?

A. Most of the people who went there and worked, and it wasn't like they were paid, they just volunteered their services and they didn't have employees.

Q. Was it usually done in the daytime by the people who did come in and help out, or was it nighttime?

A. Whoever came in to work usually came in the daytime.

Q. Did you live there?

A. Sometimes I stayed there.

Q. Anybody else?

A. Sometimes.

Q. Is there anyone else connected with this in any manner, either the printing or manufacturing?

A. No.

Q. Absolutely sure?

A. Yes.

Q. You are not protecting anyone?

A. No.

Q. And you said that you had taken some pictures of 50's and 100's, did you have a job?

A. Well, everyone there used to get money however they could and pool it together. There was a group, trying to be a group, until it just started falling apart.

Q. How did you get the \$100 bill or \$50 bill from someone to take a picture?

A. It was gotten from a bank.

Q. Who was in charge of the money there? Mrs. Young?

A. Yes. Miss---

Q. Miss Young. You never passed a \$50 or \$100 bill?

A. No.

Q. O.K.

AGENT CAPUTO: Pat, what denomination bills did you pass?

A. Just 20's.

Q. Never passed a 10?

A. No.

Q. Never passed a 1?

A. I don't think so.

Q. How about 5's?

A. No.

Q. Did anybody while you were secretly doing this operation, nobody in all the time that you spent in the print shop by yourself, never inquired?

A. Well, of course I told them that I was working on this special job, and in fact I told no one to come back there because I was putting together a children's book because that was my thing. I was supposed to be working on that. It was kind of a religious thing.

Q. Were you the only one who did the printing?

A. Uh-huh.

Q. You printed all the literature, fliers, pamphlets, and leaflets that were sent out?

A. No, they were done years ago. But I also assisted. There were others at that time who did those particular things.

Q. So you were the only person who was in the print shop?

A. They weren't with us any more, who printed that stuff up.

Q. So your sole function was to take care of the printing part of the group?

A. Correct.

Q. And you were the only one who had that specific function? Never assisted by someone?

A. I was assisted by---

Q. Were you ever assisted by any of the other people on this?

A. In the counterfeiting? No.

-24-

MR. BAILEY: What you said here today, is that true and accurate?

MISS FENILI: Yes.

MR. BAILEY: Are you willing to sign this after we have it completed and typed?

MISS FENILI: Yes.

MR. BAILEY: Do you have anything else you want to add to the statement that may have been overlooked?

MISS FENILI: No.

PATRICIA FENILI

EXHIBIT C

1 cmsr

173

2 affect its admissibility if I should rule in his favor,
3 so I will reserve decision on Exhibit 1

4 Do you have a motion at this time, Mr. Blackstone?

5 MR. BLACKSTONE: Yes, your Honor.

6 Your Honor, I wish to turn first to the Simmons
7 question. The first spread occurred on July 27th which was
8 nine days after Miss Clark learned that a bogus \$20 bill
9 was found in the cash drawer and eight days after she
10 furnished a general description to the Secret Service
11 of the person speculated by her to be the person who passed
12 the bill.

13 THE COURT: All right.

14 MR. BLACKSTONE: The description was not detailed.
15 It was a general description of a tall, thin, fair
16 complexioned young woman.

17 THE COURT: Whose description do you mean,
18 Miss Clark's?

19 MR. BLACKSTONE: Miss Clark's. With reddish
20 brown hair, as I recall.

21 THE COURT: Right.

22 MR. BLACKSTONE: Now, on July 27 when the Secret
23 Service agent Angelone showed Miss Clark a number of
24 photographs, there was one and only one photograph that
25 fitted the general description that Miss Clark gave, and

that was the photograph of Miss Fineli.

In the first place, it was the only photograph of the seven -- excuse me -- of the eighth photograph shown which was in color which could show a reddish tintish hair complexion -- hair. In addition to being the only photograph in color, it was the only photograph which showed clearly the body frame which was long, elongated, and thin.

The other photographs, for example, your Honor, Government's Exhibit 1-B was a photograph of a not very young comparatively speaking, woman who was fat-faced and quite heavy.

Government's Exhibit 1-D, which the Court has also seen previously, is also a photo of a woman not very young who has a very full face, and the body frame, from what is shown, and you only see from part of the bosom up, is that of a very full, meaty person.

The remaining photographs are photographs from which there is no way in which a person could say whether the person, whether the individual had such a long thin type frame, because you don't have a full view of the person.

So we start with a photographic identification in which the picture of Miss Fineli was the only picture which

1 cmsr

2 fitted the general description. That is the first stage.

3 Now, second stage, and I think it is very
4 important, is what the Secret Service agent asked of Miss
5 Clark. He didn't ask her, according to Miss Clark, he
6 didn't ask her, see if you can identify whether any of
7 these photographs is the person that you think you
8 committed this. He said, and I quote, "Tell me which of
9 the photos most nearly resembled."

10 Now, this is a strategy, and I think that it is
11 easy to assume -- I could fully develop it, that the
12 Court apparently was not totally interested in my developing
13 this, but is a pattern which shows a subtle maneuver on
14 the part of the Secret Service Agent to target in on
15 Patricia Fineli, because the picture of Patricia Fineli
16 was the only one who most nearly resembled the general
17 description of any of those photos.

18 Once having achieved that, and suddenly sphered
19 the witness to that photo, then the next step was a very
20 easy one to come by.

21 THE COURT: Well, Mr. Blackstone, I don't remember
22 any particular ruling I made, but if I did rule against
23 exploring that further, it was because it seemed to me
24 that Miss Clark not only while she stated the agent
25 asked those -- that question and she answered that question

1 cmsr

2 in the sense that she said that this was the one that
3 most nearly resembled, she also quite positively stated
4 that she not only thought that it was the one which
5 most nearly resembled, but she felt it was actually the
6 person whom she had seen. Therefore, it didn't seem to
7 me that it is fruitful to consider whether under other cir=
8 cumstances such an alleged strategy might be culpable
9 on the part of the agent.

10 It could be argued, too, it seems to me, that
11 to put the question mutually like that has some virtue
12 in not assuming that the group of pictures necessarily
13 include the defendant. But we can tarry too long on these
14 distinctions.

15 MR. BLACKSTONE: In any event, your Honor,
16 regarding the spread shown to Miss Clark, I think that it
17 was clearly improperly suggested when you take into account
18 what the agent said combined with the fact that the only
19 picture that fitted this description was that of Miss
20 Fineli.

21 Now, the second question under the Simmons case
22 is to ask them, of course, whether there was irreparable
23 damage, and I think that the Court must realize that this
24 woman at the time she accepted the bill, the transaction --

25 THE COURT: Andrea Clark.

1
2 MR. BLACKSTONE: Andrea Clark, did not focus
3 her attention, had no reason in particular to focus her
4 short observations on that she had on that woman. Unlike
5 Morrison's situation where he said he was suspicious.
6 This woman was not suspicious. And only realized that there
7 was a bogus bill sometime later. Under those circumstances,
8 which distinguished itself from situations where robberies
9 are committed and where individuals are -- senses may
10 be may alert than otherwise, you have a situation of a
11 usual ordinary transaction that occurs within seconds,
12 or perhaps minutes and as a consequence I submit to this
13 Court that The Government has not shown that the primary
14 taint, that the in-court identification is freed from the
15 primary taint.

16 THE COURT: Mr. Blackstone, I could call on
17 The Government to answer you, but since I have thought
18 about this and I have heard you state excellently the
19 arguments to be made in support of the proposition, but
20 none that I didn't anticipate, I am going to rule and I
21 must regretfully rule against you. I am unhappy about
22 the fact that the photograph of the defendant in this case
23 was the only color photograph in the spread that was
24 presented to the witness, but the question reduces itself
25 in my mind as to whether that plus the fact, I agree with

1 you, the photograph shows somewhat more substantial part
2 of the body, that is it goes to slightly below the waist
3 and therefore not only makes it easier to identify the
4 person in question, but also perhaps has a suggestion of
5 verticality to it which is reminiscent of the defendant's
6 figure.
7

8 Whether those features are fatal to the
9 identification, I don't think they are, I don't think they
10 are even if I weren't persuaded as I am, and I will come
11 to that in a moment, that Miss Clark genuinely and
12 independently recognized the defendant and was not unduly
13 affected by the photographs.

14 I don't think they are, because I do think there
15 are several, and a fair percentage of the photographs
16 there which are photographs of young women who have a
17 remarkably good resemblance to, in my opinion, to the
18 defendant. And I don't consider it to be improper that
19 they should be pictures of people who don't look like
20 that in there just so that there is a balanced presentation.
21 Although it is true in this case that the witness herself
22 had given a description, so that if she is going to describe
23 somebody thin, there may have been no reason to include
24 a picture of somebody fat.

25 Beyond what I have said about the spread itself,

1 cmsr
2 and I have already observed with regard to the reaction
3 of Miss Clark to the agent's statement that she should
4 point out what picture most nearly was presentable to
5 the defendant, I was most impressed by Miss Clark's
6 testimony herself, and I think it is important in case
7 this matter has to be reviewed by another Court for me
8 to state my impressions. They are, to wit, that she
9 struck me as an extraordinarily bright, careful and
10 precise young lady, in person and in her testimony. That
11 there seemed to me to be absolutely no reason for her to
12 have any malice towards the defendant or to be careless
13 or not to realize, and she did in fact appear to realize,
14 the seriousness of what she was doing, that is to identify
15 somebody in a criminal trial who might suffer as a result
16 of her testimony.

17 Under all those circumstances, the motion is
18 denied.

19 MR. BLACKSTONE: I wish to add one point with
20 respect to the showing of photographs to Mr. Morrison,
21 and that is that the identical procedure was followed, I
22 believe, except that there were three additional
23 photographs, one of those photographs was Government's
24 Exhibit 1-H, was that of an Oriental woman, and the other
25 two I have similar objections as to the ones I made in the

other case, and I might add that Mr. Morrison testified that after he picked out the photograph of Fineli, that the agent said, "You have picked the right person," and I suggest to the Court that this is improper because having been told by The Government, Secret Service, that he did pick out the person responsible, that this reinforced whatever doubts he may have had and assured that in this courtroom identification he would make out the identification because he had the strength and the support of the Secret Service behind him.

THE COURT: I agree with you that Mr. Morrison, it is possible that Mr. Morrison was influenced to a minor degree at least by being told that he had gotten the right answer to the puzzle, but in his case, as you yourself pointed out earlier, and quite properly, he had been alerted in advance to look for somebody, not only who was described to him as looking like the defendant, but who was doing what he says the defendant did in his presence, and he had reason to and actually did scrutinize her. He did pick the picture at the time and I don't think that he necessarily was terribly surprised to be told that he had picked the right one, because he would presumably pick the right one and even if he hadn't been told, it is reasonable to assume that having scrutinized

the defendant and having picked her picture once before he would have been likely to have identified her here in the courtroom, as he in fact did.

So the motion is denied as to Mr. Morrison, also.

MR. BLACKSTONE: Now, on the general motion for a judgment of acquittal, I am asking the Court to disregard the testimony, to disregard and to strike the testimony of Mrs. Seiden regarding her in-court photograph identification of Miss Fineli.

Mrs. Seiden testified that at Atlantic City on the day -- and I don't have the day -- sometime in the latter part of July, that a woman came and passed a bogus bill for an orange drink, a \$20 bill, and that she subsequently went to the police station and was shown in a show-up Miss Fineli, Virtue, who fitted generally, and the police knew this before they showed her Virtue, the clothing description.

THE COURT: I can't understand the objection to that. I don't know whether you are suggesting that the police are supposed to put different clothes on a defendant within an hour after she commits, let us assume, it's a crime, let us say a suspect, rather, or what. I mean, if somebody is brought in off the street and if a person is known to have seen the proposed suspect is

1 cmsr

2 asked in, I guess a kind of res gesti situation, is this
3 the person, I don't know what more the Constitution calls
4 for.

5 MR. BLACKSTONE: Well, I think that this is
6 distinguishable from a street situation where people can
7 walk away and the necessities of the investigation stage
8 require immediate confrontation. Here Virtue was already
9 in custody and she -- it could very well -- I think that
10 they should assure that this woman was not simply
11 identifying the person on the basis of her clothing.

12 Now, the fact that she could not identify Virtue
13 in court suggests --

14 THE COURT: But I think it is a very good way
15 to identify somebody, among others, on the basis of heir
16 clothing. There were several distinct characteristics
17 which she described, including the clothing, including
18 the size of the defendant, which is striking, and, if I
19 may say, appealing, but I mean something that would make
20 an impression. Perhaps even particularly on that witness
21 who is a very, very small girl herself. But I don't want
22 to psychoanalyze every witness that has been on the stand.

23 MR. BLACKSTONE: I was trying to make the point
24 of the fact that this witness could not identify Virtue
25 in the court when there was a photograph of her which she

1 cmsr

2 could identify and that photograph looks like Virtue is
3 the fact that her original identification was based on
4 the clothing.

5 THE COURT: Well, I simply don't come to that
6 conclusion as the trier of the fact, and I have on other
7 occasions, and been sustained by the Court of Appeals, too,
8 as far as I recall, found identification is a situation
9 in which the only identifying witness could not identify
10 the defendant in court, but did identify the witness from
11 photographs, and in that instance, there was one of them,
12 I believed, as I believe here, that the failure to identify
13 in court supplemented by the ability to identify from a
14 photograph is not a sign of -- or, putting it differently,
15 is a sign of carefulness on the part of the witness who
16 does not want dishonestly to say that she can recognize
17 the defendant now when she cannot.

18 But it has also got to be remembered that it is
19 many months since she saw the defendant, and it is not
20 surprising that she may recall her as dressed when she
21 saw her originally. So that motion is denied, too.

22 MR. BLACKSTONE: Also in connection my general
23 motion which I shall very shortly make for a judgment of
24 acquittal, I am asking the Court to strike and then
25 disregard the testimony of Officer Crane who described

1 cmsr

2 what occurred after his arrest of Virtue after he took
3 her to the police precinct -- it wasn't the precinct, I
4 think it was the City Hall -- and had to extract
5 Government Exhibit 4, I believe, from her mouth. I ask
6 that all that be excluded because at the time he arrested
7 her he lacked the requisite probable cause to effect an
8 arrest.

9 Now, at that time, and this came out in the
10 People's case, what he had was one person at a stand,
11 a custard stand, call up that Virtue was in possession
12 and tried to pass a 20, and that certainly, and it turned
13 out that she did have such a 20 in her hand, now that
14 certainly is not a basis to effect an arrest.

15 THE COURT: Well, I disagree with you. First
16 of all, that that is all he said. He didn't say much
17 more, but he said something significant further. Second,
18 that there was not enough probable cause. He said that
19 he had advice from one of the concessionaires, let's
20 call him, on the Boardwalk, who I think I may take
21 reasonable notice of probably is somewhat skilled at
22 recognizing, at least obviously counterfeit money since
23 they do so much cash transactions. Secondly, that it
24 was the defendant. Third, that the defendant he saw with
25 an open pocketbook which had a wig in it, and fourth, that

EXHIBIT D

cam 2 1

2 THE CLERK: United States of America versus
3 Patricia Fenili. Is The Government ready?

4 MR. ROSENTHAL: The Government is ready, Your
5 Honour.

6 THE CLERK: Is the defendant ready?

7 MR. BLACKSTONE: Defendant is ready.

8 THE COURT: Gentlemen, I -- ladies and gentle-
9 men, may I have quiet please? Ladies and gentlemen,
10 I have reviewed the evidence in this case and de-
11 liberated on it and I am prepared to announce my
12 verdict which is that The Government has proven its
13 case against the defendant beyond a reasonable doubt
14 as to count 1, count 2 and count 3, and that I find
15 the defendant guilty on all three counts.

16 My estimate of the evidence and my remarks may
17 constitute special findings--but if counsel believes
18 further special findings are necessary I will consider
19 it -- is that the facts clearly established the actual
20 passing by the defendant of a counterfeit twenty dollar
21 Federal Reserve note on July 18th, 1973, at about three
22 o'clock in the afternoon as charged in count 1 and in
23 count 2 at about seven o'clock in the evening, and
24 the sole question with regard to those counts is
25 whether or not the defendant intended to possess the

cam

3 1

2

requisite criminal intent to commit a crime.

3

4

5

6

7

8

9

10

11

find.

12

13

14

15

16

17

I believe however abhorrant Miss Fenili's, or Lady Virtue's conduct may have been on those days and the days succeeding which are not charged but which are relevant to the proof here, that she did do what she was charged with, that she knew what she was doing and that she did it purposely.

18

19

20

21

22

23

24

25

I think it is quite possible that as she stated in her summation yesterday quite eloquently that she is contrite because of what was done, not only vis a vis perhaps the Old World Government, as she calls it, but much more importantly, vis a vis her own colleagues and Oh himself whom she has mentioned so often throughout this trial. But the latter proposition, as she also said yesterday, is a matter of

2 her own conscience and between herself and OM and
3 is not the question which I am called upon to de-
4 cide, although it may well be relevant when it comes
5 to determining what punishment ought to be imposed.

6 I also find that the defendant did absent her-
7 self from this Court on the 20th of August, 1973,
8 after having been released pursuant to Title 18,
9 United States Code, Chapter 207, and that she did so
10 intentionally.

11 I believe I find that she was aware when she
12 left this Court on the 13th of August, 1973, that she
13 was under instructions of The Court to return on the
14 20th of August, 1973 as a term of her bail.

15 The facts in my opinion prove beyond a reasonable
16 doubt that she deliberately determined not to return
17 to this Court again for whatever reasons she may have
18 felt conscientiously were approvable. This opinion is
19 strongly based, or strongly supported, by the fact
20 that she not only absented herself from The Court,
21 but from the metropolitan area of New York, going to
22 Chicago, or, Galaxus as she calls it, and there staying
23 for a time under an assumed name, not even the name
24 which she presently uses, and from there going to a
25 foreign country and again using even a further assumed

2 name which was not the same as her name of birth,
3 the name of Lady Virtue, or the name that she used
4 in Galaxus.

5 I may say that I am puzzled and troubled by
6 the fact that a young lady who seems in her personal
7 conduct in this Court as to her colleagues to have
8 decorum, excellent manners, respect for me as a
9 Judge and the authority of this Court and who seemed
10 to think deeply about spiritual matters, should have
11 failed so far awry of what constitutes not any esoteric
12 or bourgeoisie standard of this society, but one of
13 what I think can fairly be characterised as plain
14 honesty.

15 I don't know whether a person who passes a twenty
16 dollar bill realises what he is doing, but it is a
17 form of stealing. He is by false pretences taking
18 money away from somebody else, just as effectively as
19 if he went into that person's house and leaving an
20 object of ten cents or twenty-five cents worth took a
21 twenty dollar bill away.

22 Analysed in that fashion, which is the only
23 proper fashion that I can see, we are back to the
24 Ten Commandments. I should assume that the lord OM
25 believes that no one should take anybody else's

1
2 property unless perhaps, and even then I wonder,
3 under the most dire and supreme emergencies which
4 might justify contemporary aberration.

5 These are the findings of The Court. It comes
6 to me with no sense of gratification whatsoever, and
7 I do want to know as much as I can about Lady Virtue
8 before sentence is imposed, because I believe that a
9 great deal of thought should be given to what is an
10 appropriate sentence here, and I have keenly in mind
11 that she is separated from her children at the present
12 time, and I agree with her that unless that is abso-
13 lutely necessary it is a situation which ought not to
14 continue.

15 I am not in a position to do anything about im-
16 proving that situation at the moment because I need
17 to have further information before I can consider an
18 application, but I have two suggestions: that the
19 application for reduction of bail last week I did
20 say that The Court would be willing to do whatever it
21 could to assist her in at least visiting her children
22 until her future is made clear; furthermore, if Mr.
23 Blackstone can arrange to have The Probation Office
24 perhaps give some expedition to this pre-sentence
25 report he can quote me as requesting it in view of

1
2 the fact that Lady Virtue is separated from her
3 two infant children.

4 I don't think there is anything further at this
5 time. Is there anything anybody wishes to bring to
6 my attention, or ask --

7 THE DEFENDANT: Yes, Your Honour, I have a state-
8 ment if you will let me make it.

9 THE COURT: What is that?

10 THE DEFENDANT: I have a statement from OM which is
11 that any government that would find Virtue guilty is
12 obsolete, and Your Honour knew that how many times
13 The Lord has forgiven you. I would just care to re-
14 mind you of that.

15 THE COURT: I understand, Lady Virtue, and I
16 understand why you feel that way. Each of us has our
17 role to play according to his and her conscience.

18 MR. BLACKSTONE: Your Honour, on the point about
19 arranging for a visit by Virtue of her children at
20 the New York Foundling Home, I spoke to a representa-
21 tive at the New York Foundling Home and he indicated
22 that during the weekdays the hours, I believe, are
23 from nine until three, and I can prepare an order
24 having The United States Marshall take Virtue there.

25 THE COURT: I will be glad to sign such an order.

EXHIBIT E

DAVID BLACKSTONE
ATTORNEY AT LAW

335 BROADWAY, NEW YORK, N. Y. 10013

(212) 226-6684

June 11, 1974

Ms. Patricia Fenili
Women's House of Detention
Rikers Island
East Elmhurst, New York

Re: *U.S.A. v. Patricia Fenili, a/k/a*
Lady Virtue
Docket No. 74-1612

Dear Lady Virtue:

I have carefully reviewed the entire record in your case and have come to the conclusion that there is no issue I can conscientiously present to the Court of Appeals on your behalf. Accordingly I have prepared an application to be relieved from your representation because I believe there is no non frivolous issue in your case. I enclose a copy of this application which I am filing with the United States Court of Appeals for the Second Circuit.

What I believe the United States Attorney may now do is request the Court to dismiss your appeal. However, you will be given an opportunity to oppose either this expected motion to dismiss or my motion to be relieved, or both. You may file a statement with the Court, explaining why you believe your appeal has merit and should not be dismissed. You may request that my application to be relieved be dismissed, or that it be granted and another attorney be assigned to represent you. Your statement should be forwarded to the United States Court of Appeals for the Second Circuit, United States Court House, Foley Square, New York, New York 10007. The docket number of your appeal to which you should refer is 74-1612. The application will be before the Court on June 25, 1974, and your claims and contentions should be submitted well in advance of that date. If you complain about the fairness of your trial you should give your reasons in detail. You should also state whether or not you desire new counsel on your appeal.

Very truly yours,

David Blackstone

DB:lt
Enclosure